

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAMIEN MALCOLM,  
Plaintiff,  
vs.

Civil Action  
No. 24-53

PORTFOLIO RECOVERY ASSOCIATES,  
LLC,  
Defendant.

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ROBERT SOFALY,  
Plaintiff,  
vs.

Civil Action  
No. 23-2018

PORTFOLIO RECOVERY ASSOCIATES,  
LLC,  
Defendant.

- - -

Transcript of In-Person Hearing on February 20, 2024, in  
the United States District Court, 700 Grant Street,  
Pittsburgh, PA 15219, before Honorable Cathy Bissoon, United  
States District Judge.

**APPEARANCES:**

**For the Plaintiffs:** J.P. WARD & ASSOCIATES  
Joshua P. Ward, Esquire  
Travis Andrew Gordon, Esquire  
201 S. Highland Avenue  
Suite 201  
Pittsburgh, PA 15206

**For the Defendant:** MESSER STRICKLER BURNETTE, LTD.  
Lauren M. Burnette, Esquire  
Spencer M. Schulz, Esquire  
12276 San Jose Blvd., Suite 718  
Jacksonville, FL 32223

Keith McGurgan, Esquire

**Court Reporter:** Veronica R. Trettel, RMR, CRR  
U.S. Courthouse  
700 Grant Street  
Suite 5300  
Pittsburgh, Pennsylvania 15219

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1 P-R-O-C-E-E-D-I-N-G-S

2 Tuesday Morning, February 20, 2024

3 THE COURT: Okay, be seated. Now is the time for the  
4 hearing in the Damien Malcolm versus Portfolio Recovery  
5 Associates, and Robert Sofaly versus Portfolio Recovery  
6 Associates, Case Numbers 24-53 and 23-2018 respectively.

7 Can counsel please identify themselves for the  
8 record.

9 MR. WARD: Good morning, Your Honor. Attorney Josh  
10 Ward on behalf of the plaintiff.

11 MR. GORDON: Attorney Travis Gordon on behalf of the  
12 plaintiffs, Mr. Sofaly and Mr. Malcolm.

13 MS. BURNETTE: Good morning. Lauren Burnette for  
14 Portfolio Recovery Associates.

15 THE COURT: Okay. And who is joining you,  
16 Ms. Burnette, today?

17 MS. BURNETTE: To my right is Keith McGurgan who is  
18 general counsel at Portfolio Recovery Associates, and to his  
19 right is Spencer Schulz, who is also counsel of record.

20 THE COURT: Very good. Okay. And who do you have  
21 with you today, Mr. Ward?

22 MR. WARD: We have Mr. Sofaly, Mr. Malcolm, and as  
23 instructed, we have certain members of our staff. We have  
24 Mark Hollingsworth, paralegal. Please raise your hand for the  
25 Court. Tori Salada, legal assistant. And we also have Jack

1 Hodil, who is a project manager and holds various -- has  
2 various hats within the firm.

3 THE COURT: Okay. And if you wouldn't mind just  
4 pointing out to me which of your clients is which back there.

5 MR. GORDON: Mr. Damien Malcolm would be sitting to  
6 your left, Your Honor, and Mr. Robert Sofaly to your right,  
7 Your Honor.

8 THE COURT: Okay. Thank you. All right.

9 As the Supreme Court recognized, this court, like  
10 other federal courts, maintains the inherent authority to  
11 supervise the conduct of attorneys admitted to practice before  
12 it and to maintain control over the proceedings before the  
13 court.

14 Additionally, attorney misconduct occurring during  
15 the pendency of a case assigned to a judge of this court may  
16 be subject to attorney discipline and sanctions and other  
17 consequences in the case, as well as a separate attorney  
18 disciplinary proceeding before the court.

19 So I may have some questions for all of you here  
20 today and, as a result, I'm going to ask Joungsun if she could  
21 please swear you all in, and that would include all lawyers  
22 present, as well as the clients and the paralegals.

23 THE DEPUTY CLERK: Raise your right hands.

24 (Whereupon, the oath was administered.)

25 THE DEPUTY CLERK: You may lower your hands. Please

1       be seated.

2                     THE COURT: Okay. Additionally, I'm not entirely  
3                     certain what will come out of today's hearing. No one is  
4                     currently accused of committing any crime, but out of an  
5                     abundance of caution, you do have the right to remain silent.  
6                     Anything you say can and will be used against you in court.

7                     If during the course of today's hearing you have a  
8                     reasonable belief that the statements asked for might be used  
9                     against you in some current or future criminal proceeding, you  
10                    may invoke your right to remain silent in response to any of  
11                    my questions. Simply say, "I wish to plead the 5th."

12                   Finally, I want to make sure everybody understands  
13                   that perjury is a crime, and answering any of my questions  
14                   today untruthfully constitutes perjury. Everybody understand?  
15                   (All present answered, "Yes, Your Honor.")

16                   THE COURT: Excellent. All right. So why don't we  
17                   get started here. We're going to start with your clients,  
18                   Mr. Ward. I understand that one of them is unable to really  
19                   maneuver over to the witness stand.

20                   MR. WARD: I believe he can, Your Honor.

21                   DAMIEN MALCOLM: It will take some time, Your Honor.

22                   THE COURT: I'll start with Mr. Malcolm. If you  
23                   wouldn't mind coming over to the witness stand. Thank you.

24                   DAMIEN MALCOLM: I apologize, Your Honor.

25                   THE COURT: Take your time. That is perfectly fine.

D. **MALCOLM - BY THE COURT**

6

1                   Joungsun, if you wouldn't mind distributing this to  
2 counsel.

3                   DAMIEN MALCOLM: Thank you very much.

4                   DAMIEN MALCOLM, having been previously sworn, was  
5 examined and testified as follows:

6                   THE COURT: Mr. Malcolm, first, if you can just state  
7 your name for the court reporter.

8                   DAMIEN MALCOLM: Damien Thomas Malcolm.

9                   THE COURT: Mr. Malcolm, you are a client of the Ward  
10 firm; is that correct?

11                  DAMIEN MALCOLM: I am, yes.

12                  THE COURT: And I'm showing you a letter that was  
13 attached to the complaint in this matter. Have you ever seen  
14 this letter?

15                  DAMIEN MALCOLM: Yes, I have.

16                  THE COURT: Okay. Tell me about this letter.

17                  DAMIEN MALCOLM: Due to the distance and the agency  
18 that I assigned to Attorney Gordon specifically, this was  
19 discussed with me on several occasions that because of my  
20 disability and the difficulties in both writing and  
21 maneuvering, that they would draw up this letter on my behalf  
22 and this would be sent to Portfolio on my behalf, that they  
23 would act as my attorneys.

24                  THE COURT: Okay. And this particular signature on  
25 this document, is this your signature?

D. MALCOLM - BY THE COURT

7

1                   DAMIEN MALCOLM: No, this is not my signature. This  
2 is, again, assigned as agency to the attorneys to do so,  
3 mostly due to timing and the necessity to get this completed  
4 as quickly as possible.

5                   THE COURT: Okay. What did you understand this  
6 letter to be?

7                   DAMIEN MALCOLM: Well, this letter is an explanation  
8 letter as to why we have come to the situation that we are in,  
9 my personal circumstances, and as part of the correspondence  
10 to Portfolio Recovery to come to some matter of attritional  
11 needs with these matters, being debt.

12                  THE COURT: So this letter represents your personal  
13 circumstances?

14                  DAMIEN MALCOLM: Not -- ostensibly, yes. Not exactly  
15 per se, but this is a general overview.

16                  THE COURT: Okay. So you apparently don't know how  
17 to operate in the digitized world; is that accurate?

18                  DAMIEN MALCOLM: I have difficulty with it.

19                  THE COURT: So you indicated that here? These are  
20 your words?

21                  DAMIEN MALCOLM: Yes, as dictated essentially.

22                  THE COURT: So you dictated this letter?

23                  DAMIEN MALCOLM: Not directly word for word. This  
24 was prepared by them, we reviewed it together, and I agreed  
25 that this seemed to be acceptable and sufficient.

D. MALCOLM - BY THE COURT

8

1                   THE COURT: So tell me towards the end of this letter  
2 about this TV.

3                   DAMIEN MALCOLM: This is the only thing I have left  
4 in my life. I just want to raise my children and spend time  
5 with them.

6                   THE COURT: Sir, tell me about this TV at the end of  
7 this letter.

8                   DAMIEN MALCOLM: What would you like to know  
9 about it?

10                  THE COURT: Tell me about it. Tell me about who  
11 tried to sell it to you and why.

12                  DAMIEN MALCOLM: I mean, who tried to sell it to me?  
13 I'm afraid I don't --

14                  THE COURT: If you could read the last line of the  
15 letter to yourself and tell me about this TV that somebody was  
16 trying to sell you.

17                  DAMIEN MALCOLM: I mean simply, it's the only  
18 possession that I have left. I wanted the television to enjoy  
19 what little I can do at this point. That has been over my  
20 head and crippling, which is a game that -- actually from my  
21 divorce and put me in a position where all of my possessions  
22 are gone. I have nothing left.

23                  THE COURT: So you just want to watch the TV games on  
24 Sunday and they are trying to sell you some -- I believe it  
25 says XR65A80K --

D. MALCOLM - BY THE COURT

9

1                   DAMIEN MALCOLM: I have so many phone calls and  
2 communications from them quoting me all of these numbers and  
3 all of these things, what felt like a very -- an attempt to  
4 confuse me and get me to a point where I would sign or agree  
5 to anything.

6                   So I asked the attorneys to deal with this matter on  
7 my behalf. They had sent me a letter as part of this  
8 proceedings. I checked and did a little bit of diligence with  
9 my partner who helped me to assess them as a firm. They have  
10 communicated well with me. They have done everything that was  
11 asked and presented me with the right options and helped to  
12 get to this point.

13                  This was the letter drafted, handwritten, again,  
14 which I have difficulty with, was what I was told is the  
15 process to follow.

16                  THE COURT: Okay. Joungsun, if you wouldn't mind  
17 providing these to counsel. I'm going to give you another  
18 letter here, Mr. Malcolm.

19                  Now, Mr. Malcolm, you'll agree with me that is the  
20 exact same letter.

21                  DAMIEN MALCOLM: It does appear to be. Although,  
22 obviously, this is not my name.

23                  THE COURT: Correct. This was sent on behalf of  
24 Mr. Sofaly.

25                  DAMIEN MALCOLM: Yes.

D. MALCOLM - BY THE COURT

10

1                   THE COURT: And it's very strange that you and  
2 Mr. Sofaly had the exact same experience --

3                   DAMIEN MALCOLM: I can't speak --

4                   THE COURT: -- the exact same TV.

5                   DAMIEN MALCOLM: I can't speak for any other  
6 individuals. I can only speak to my circumstances, and I know  
7 what was discussed between me and the attorneys. I obviously  
8 don't know what they did.

9                   THE COURT: And you were not directed to respond  
10 untruthfully to any of my questions?

11                  DAMIEN MALCOLM: Certainly not. Nor would I.

12                  THE COURT: All right. And with respect to the  
13 signature on the bottom of the letter that supposedly came  
14 from you, do you know who affixed that signature to that  
15 letter?

16                  DAMIEN MALCOLM: That's part of the firm's internal  
17 process. I don't know specifically, no. I was advised this  
18 would be prepared on my behalf. This is part of I believe  
19 their template in dealings with these goods or these types of  
20 matters, and that's what they forwarded me.

21                  They did show me this. I have seen this. This has  
22 been part of the process and the correspondence. They are the  
23 specialists in this area. I am not. I found it very  
24 distressing for me and my family, as much to the point where  
25 Portfolio was calling my ex-wife to harass her.

R. SOFALY - BY THE COURT

11

1           At that point I had to absolve myself from dealing  
2 with this. It was beginning to very seriously affect my life  
3 and very seriously affect my emotional well-being, and these  
4 attorneys have acted very well on my behalf, and they have  
5 been very kind and helpful and very open with their  
6 communication. I don't feel they have done anything  
7 improprietary at all.

8           THE COURT: Well, thank you very much, Mr. Malcolm.  
9 That's all I have.

10           DAMIEN MALCOLM: You're very welcome, Your Honor.  
11 Thank you. Would you like these?

12           THE COURT: No, you can leave them there. They are  
13 going to come up again.

14           DAMIEN MALCOLM: Certainly. Thank you.

15           THE COURT: With that, I'll ask Mr. Sofaly to come  
16 up.

17           DAMIEN MALCOLM: Careful. There's a bit of a heck of  
18 a step up there.

19           ROBERT SOFALY, a witness herein, having been  
20 previously sworn, was examined and testified as follows:

21           THE COURT: Mr. Sofaly, if you wouldn't mind just  
22 stating your name for the court reporter.

23           ROBERT SOFALY: Robert Sofaly.

24           THE COURT: Mr. Sofaly, I would like you to take a  
25 moment to look at those documents. One of them is purportedly

R. SOFALY - BY THE COURT

12

1 signed by you. Is that your signature on that document?

2 ROBERT SOFALY: That's signed by the law firm. I  
3 give them the authority to handle my case, write letters to  
4 the creditors that are bothering me, and I pretty much  
5 authorized everything.

6 THE COURT: Okay. And if you could take a look at  
7 the letter that is supposedly from you. Have you seen that  
8 letter before?

9 ROBERT SOFALY: Yes.

10 THE COURT: Okay. And when did you see that letter?

11 ROBERT SOFALY: Well, I told the law firm my thoughts  
12 and everything. They wrote it down. They sent it to me,  
13 telling me read what I told them.

14 THE COURT: So you told them what's in this letter?

15 ROBERT SOFALY: Yeah. I mean, it was hard for me.

16 My --

17 THE COURT: Let's not go there. You told them what's  
18 in this letter?

19 ROBERT SOFALY: Pretty much, yes.

20 THE COURT: What do you mean "pretty much"?

21 ROBERT SOFALY: Not word for word.

22 THE COURT: Okay. So what in this letter did you  
23 tell them?

24 ROBERT SOFALY: About I'm getting --

25 THE COURT: I'd ask you to take a look at this letter

R. SOFALY - BY THE COURT

13

1 and tell me what in this letter did you tell them?

2 ROBERT SOFALY: It was just getting difficult for me  
3 to put up with everything.

4 THE COURT: So that's the only part of this letter  
5 that you told them?

6 ROBERT SOFALY: No. I mean, about watching TV  
7 sports. I'm a sports fanatic. Yeah, I watch TV.

8 THE COURT: So tell me about that particular TV model  
9 that you are referencing there in that letter.

10 ROBERT SOFALY: To the best of my knowledge, I'm not  
11 sure exactly what the numbers are.

12 THE COURT: But you authorized them to offer that  
13 number?

14 ROBERT SOFALY: I'm not sure, ma'am.

15 THE COURT: Okay. Do you think it's a little strange  
16 that you and Mr. Malcolm have the same TV that is at issue  
17 here and are you confused about the same TV?

18 ROBERT SOFALY: I'm not sure, ma'am.

19 THE COURT: You're not sure.

20 ROBERT SOFALY: Yeah, it's crazy, you're right.

21 THE COURT: Right? It seems crazy. I agree. I  
22 mean, you'll admit that those are the same letters; correct?

23 ROBERT SOFALY: I can't recall exactly what the  
24 letters were.

25 THE COURT: No, those two letters that you have in

R. SOFALY - BY THE COURT

14

1 your hand, the one from you supposedly and the one from  
2 Mr. Malcolm are the exact same letters.

3 ROBERT SOFALY: That's my signature and my birth date  
4 and my Social Security.

5 THE COURT: And the only thing that's different on  
6 those two letters is the fact that one is from you and one is  
7 from Mr. Malcolm, and the dates are different, and the  
8 handwriting is different at the top.

9 ROBERT SOFALY: I guess, ma'am.

10 THE COURT: Mm-hmm. And have you been instructed to  
11 answer any of my questions untruthfully here today?

12 ROBERT SOFALY: No, Your Honor.

13 THE COURT: All right. Thanks. You can leave those  
14 up there.

15 MR. WARD: Your Honor, may I be heard?

16 THE COURT: No, not yet. Thank you. You'll have a  
17 chance to be heard, Mr. Ward.

18 MR. WARD: Can I call the witness back up?

19 THE COURT: No. This is my hearing. This is not an  
20 advocacy situation. This is my hearing to determine what  
21 you've done. So, no, we're not doing that yet.

22 If you have something to submit at some point, you  
23 can certainly have that opportunity. Right now, this is not  
24 that kind of proceeding.

25 MR. WARD: I just -- and I will, you know, be quiet,

1       but I think I should be afforded some procedural due process,  
2 Your Honor.

3             THE COURT: You absolutely may and you will  
4 absolutely have an opportunity to explain everything that  
5 you've done here.

6             MR. WARD: Well, not just to explain what --

7             THE COURT: If you have somebody to call at some  
8 point, you may do that.

9             MR. WARD: Thank you, Your Honor.

10            THE COURT: Okay. Thank you. Now, Mr. Ward, with  
11 respect to the letters that were generated by -- in the Sofaly  
12 and the Malcolm cases, who actually wrote out these letters?

13            MR. WARD: So --

14            MR. GORDON: May I respond, Your Honor?

15            THE COURT: Yes.

16            MR. WARD: No, I would like to respond. The question  
17 was directed to me and you can supplement. Is that okay, Your  
18 Honor?

19            THE COURT: Sure.

20            MR. WARD: So these are form letters. One was  
21 drafted by Ms. Salada. I believe the other one was drafted by  
22 Mr. Hollingsworth, all at the direction of Attorney Gordon as  
23 part of a practice which they intend to -- you know, it's part  
24 of credit repair and auditing.

25            THE COURT: I'm just asking who wrote the letters.

T. SALADA - BY THE COURT

16

1 MR. WARD: Salada and Mr. Hollingsworth.

2 THE COURT: So did you say Salada is here?

3 MR. WARD: Both of them are here, yes.

4 THE COURT: Okay, let's start with Salada.

5 TORI SALADA, a witness herein, having been  
6 previously sworn, was examined and testified as follows:

7 THE COURT: Okay. Yes, please. If you could and if  
8 you wouldn't mind stating and spelling your name for the court  
9 reporter.

10 TORI SALADA: Tori Salada, S-A-L-A-D-A.

11 THE COURT: T-O-R-I?

12 TORI SALADA: Yes, ma'am.

13 THE COURT: Okay. Very good. What's your role,  
14 Ms. Salada?

15 TORI SALADA: I was a legal assistant at J.P. Ward &  
16 Associates.

17 THE COURT: With respect to the two documents in  
18 front of you, can you tell me if you had any involvement with  
19 either of the documents?

20 TORI SALADA: Yes, mine would be --

21 THE COURT: And if you wouldn't mind speaking  
22 directly into the microphone.

23 TORI SALADA: Yes, sorry. I wrote the addresses, and  
24 then I filled out their, like signatures and the date of  
25 birth.

T. SALADA - BY THE COURT

17

1           THE COURT: For both of those?

2           TORI SALADA: Yes, for both of them.

3           THE COURT: Those do seem to be different  
4 handwriting. Is there some reason you employed different  
5 handwriting for both of those?

6           TORI SALADA: The contents of the letter were not  
7 drafted by me. They were drafted by Mark, but then I filled  
8 them out for him.

9           THE COURT: No. I guess what I mean even with  
10 respect to the address and the signature lines, those appear  
11 to be different handwriting.

12           TORI SALADA: This one for Damien is for sure my  
13 handwriting. This one I'm not positive.

14           THE COURT: So you are not sure whether Sofaly is  
15 your handwriting?

16           TORI SALADA: It could be mine and I was writing  
17 sloppily, but I believe it might be Mark's.

18           THE COURT: So with respect to the contents of the  
19 letter, do you know who actually wrote the contents of the  
20 letter?

21           TORI SALADA: I believe that was Mark.

22           THE COURT: Okay. And Mark's last name again?

23           TORI SALADA: Hollingsworth.

24           THE COURT: Hollingsworth. Okay. And tell me how  
25 this works. What is your job with respect to these letters?

T. SALADA - BY THE COURT

18

1 TORI SALADA: So I would get the cases from Jack and  
2 I just --

3 THE COURT: And who is Jack?

4 TORI SALADA: He is the project manager.

5 THE COURT: Okay.

6 TORI SALADA: So then I would just put the Portfolio  
7 or the company in, and I would fill out the client's  
8 information and then send them off.

9 THE COURT: Okay. And with respect to the signatures  
10 on these documents, who told you to sign these documents on  
11 behalf of these clients?

12 TORI SALADA: Well, the clients signed a POA so we  
13 were sure that it was genuine signatures.

14 THE COURT: And in that they authorized signatures?

15 TORI SALADA: I believe so, yes.

16 THE COURT: Who told you that?

17 TORI SALADA: Everybody that I worked underneath. So  
18 Jack and Travis.

19 THE COURT: And when you say "Jack and Travis," if  
20 you wouldn't mind including their last names, that would be  
21 helpful.

22 TORI SALADA: Hodil and Gordon. Sorry.

23 THE COURT: So is this your only job at the Ward firm  
24 or do you do anything else?

25 TORI SALADA: Yeah, this is primarily my job.

T. SALADA - BY THE COURT

19

1           THE COURT: So this is your job, to write the address  
2 and sign these documents?

3           TORI SALADA: Yes. I mean, I did other things, but  
4 like secretarial tasks.

5           THE COURT: And with respect to the contents of these  
6 letters, do you have any idea where the contents come from?  
7 We just heard Mr. Sofaly and Mr. Malcolm indicated that they  
8 came from them. Is that your understanding?

9           TORI SALADA: I'm not exactly sure.

10          THE COURT: Okay. Who would know the answer to that?

11          TORI SALADA: Probably anybody that was working  
12 above me.

13          THE COURT: Okay. So certainly Mr. Ward and  
14 Mr. Gordon would know the answer to that?

15          TORI SALADA: Yes, absolutely.

16          THE COURT: Okay. And with respect to this  
17 particular letter, you're familiar with the contents of this  
18 letter, and, in fact, you've seen the contents of this letter  
19 before?

20          TORI SALADA: I've seen it, yes, but I didn't really  
21 read it.

22          THE COURT: Okay. But this letter is familiar to  
23 you. Obviously you have seen it in two cases now.

24          TORI SALADA: Yes.

25          THE COURT: I assume you know that there are many

T. SALADA - BY THE COURT

20

1 other cases where this letter has appeared.

2 TORI SALADA: Yes.

3 THE COURT: Okay. And are you familiar with other  
4 letters that are like this letter in the sense that you have  
5 the same letter over and over again where you basically -- you  
6 do the signing off on the letter, but the contents of the  
7 letter are the same.

8 So, for example, there's a letter about a person who  
9 desires to buy a bike. Are you familiar with that letter.

10 TORI SALADA: Not exactly. Not specifically.

11 THE COURT: Okay. All right. So let me ask you  
12 this. Are you only in charge of this letter, this particular  
13 type of letter, the contents of this letter, the one -- do you  
14 get a certain letter and does another paralegal get a  
15 different letter?

16 TORI SALADA: No, ma'am. And I'm not a paralegal. I  
17 was just a legal assistant. But the contents of the letter  
18 was not my responsibility. It was just filling out the form  
19 for it, yeah.

20 THE COURT: So you may have signed other forms on  
21 behalf of your firm; is that accurate?

22 TORI SALADA: In regards to like dispute letters,  
23 yes.

24 THE COURT: Joungsun, if you wouldn't mind passing  
25 these out.

M. HOLLINGSWORTH - BY THE COURT

21

1           I'm going to show you another letter here. Are you  
2 familiar with this letter? Well, there are several letters.  
3 So you can take a look at them.

4           TORI SALADA: In this one, only two I believe are in  
5 my handwriting.

6           THE COURT: Okay. Can you tell me which two?

7           TORI SALADA: The one that is on the back of the  
8 first page, and then the one immediately following that, the  
9 one for Damien Malcolm and then Carolyn Walker.

10          THE COURT: Okay. All right. Joungsun, if you  
11 wouldn't mind handing those out.

12          I'll ask you to take a look at that one. This was  
13 the one about the bicycle, indicating that the individual is  
14 interested in a bicycle. Are you familiar with this letter?

15          TORI SALADA: No, ma'am, this one I am not familiar  
16 with at all.

17          THE COURT: Okay. Very good. Those are my  
18 questions. Thank you.

19          TORI SALADA: Leave these up here?

20          THE COURT: Yeah, you can leave them all there.

21          Mister -- is it Hollingsworth? If you wouldn't mind.

22          MARK HOLLINGSWORTH, a witness herein, having been  
23 previously sworn, was examined and testified as follows:

24          THE COURT: Mr. Hollingsworth, if you wouldn't mind  
25 just stating and spelling your name for the court reporter.

M. HOLLINGSWORTH - BY THE COURT

22

1 MARK HOLLINGSWORTH: My name is Mark Hollingsworth,  
2 H-O-L-L-I-N-G-S-W-O-R-T-H.

3 THE COURT: Okay. And with respect to -- let's just  
4 start with Mr. Malcolm and Mr. Sofaly, Mr. Hollingsworth.  
5 What is your role with respect to the letters in those cases,  
6 if any?

7 MARK HOLLINGSWORTH: I am a paralegal. I drafted  
8 these letters.

9 THE COURT: Okay. So you are the draft person for  
10 these letters in terms of the content?

11 MARK HOLLINGSWORTH: Yes.

12 THE COURT: Okay. Tell me about the content of these  
13 letters.

14 MARK HOLLINGSWORTH: The letter is primarily to  
15 convey the dispute of the debt.

16 THE COURT: So you are saying this letter is  
17 primarily to convey the dispute of a debt?

18 MARK HOLLINGSWORTH: Yes, Your Honor.

19 THE COURT: And tell me where you got the narrative  
20 for these letters.

21 MARK HOLLINGSWORTH: I'm sorry, what do you mean?

22 THE COURT: Where did the words from this letter come  
23 from?

24 MARK HOLLINGSWORTH: I drafted a general sentiment  
25 about there were -- this one is about the difficulties of

M. HOLLINGSWORTH - BY THE COURT

23

1       navigating the digital age. Then there's the debt dispute  
2       clearly in there. Then it continues on on that same thing of  
3       the complexity of the digital age.

4                 THE COURT: And as far as the actual content is  
5       concerned, tell me what your interactions were with  
6       Mr. Malcolm and Mr. Sofaly.

7                 MARK HOLLINGSWORTH: My interactions with these  
8       clients would have begun at the representation stage for the  
9       FDCPA complaint.

10               At that point, we had already agreed to represent  
11      them in terms of sending dispute letters. We already had that  
12      authorization to dispute these debts to Portfolio Associates,  
13      and these letters were sent to do that. After we --

14               THE COURT: And if you wouldn't mind just speaking  
15      into that mic.

16               MARK HOLLINGSWORTH: Of course. After the disputes  
17      were sent and we would find the violation, we would go back  
18      and discuss with the clients the process again. That would be  
19      me on the phone with them at that point. And then if  
20      everything with representation agreements went through, I  
21      would draft a complaint and move on to that stage.

22               THE COURT: And this letter in particular, had you  
23      sent this letter out before any discussions with Mr. Malcolm  
24      or Mr. Sofaly? In other words, did this letter preexist any  
25      relationship with Mr. Malcolm or Mr. Sofaly?

M. HOLLINGSWORTH - BY THE COURT

24

1 MARK HOLLINGSWORTH: Looking at it, the timeline, the  
2 Sofaly letter may have been drafted at that moment, but it was  
3 then used later.

4 THE COURT: So you are saying Mr. Sofaly's letter was  
5 the template for Mr. Malcolm's letter?

6 MARK HOLLINGSWORTH: It may have been my only -- you  
7 know, the thing that would lead me to believe that, is that I  
8 signed this one. At that stage I was still addressing and  
9 signing letters.

10 THE COURT: So that's your signature on that  
11 particular letter?

12 MARK HOLLINGSWORTH: On Sofaly's letter, yes.

13 THE COURT: I guess what I'm trying to get at is the  
14 actual narrative that you offer in the context of these two  
15 letters, did you write that before ever speaking with  
16 Mr. Sofaly or Mr. Malcolm?

17 MARK HOLLINGSWORTH: Yes.

18 THE COURT: Okay. And when did you write this  
19 particular narrative?

20 MARK HOLLINGSWORTH: If I had to ballpark it, it  
21 would have been in and around August. This is when the Sofaly  
22 letter basically initiated the practice.

23 THE COURT: So you're saying that this particular  
24 letter, which I'll represent to you has come through our court  
25 multiple times beyond Mr. Sofaly and Mr. Malcolm here, was

M. HOLLINGSWORTH - BY THE COURT

25

1 written sometime around the time that Mr. Sofaly submitted his  
2 letter?

3 MARK HOLLINGSWORTH: Within a couple of months.

4 THE COURT: Okay. And then can I ask why you used  
5 the same letter then for Mr. Malcolm? Mr. Malcolm informs us  
6 that this letter is his feelings about things.

7 You'll agree with me that it's weird that Mr. Malcolm  
8 and Mr. Sofaly have the same feelings about things?

9 MARK HOLLINGSWORTH: I would say the feelings are  
10 very general.

11 THE COURT: You don't think they are specific at all?

12 MARK HOLLINGSWORTH: There are specific details.

13 THE COURT: There are specific details that you will  
14 agree are the same; correct?

15 MARK HOLLINGSWORTH: Yes, in these letters.

16 THE COURT: In fact, the same as other letters of  
17 this that are wandering around our courthouse; is that  
18 accurate?

19 MARK HOLLINGSWORTH: Yes.

20 THE COURT: Are you also the author of the bicycle  
21 letter?

22 MARK HOLLINGSWORTH: Which letter is that?

23 THE COURT: Yeah. It's the letter -- oh, while I'm  
24 doing this, with respect to -- that's the one that looks like  
25 this, (indicating).

M. HOLLINGSWORTH - BY THE COURT

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1 MARK HOLLINGSWORTH: The Kayla Kantorowski letter.

2 THE COURT REPORTER: I'm sorry, say it again,

3 Kayla --

4 THE COURT: Kayla Kantorowski, K-A-Y-L-A,  
5 K-A-N-T-O-R-O-W-S-K-I.

6 MARK HOLLINGSWORTH: I did not author this letter.

7 THE COURT: Do you know who did author this letter?

8 MARK HOLLINGSWORTH: These appear to be -- no, I  
9 don't know.

10 THE COURT: Okay. You are not sure who authored this  
11 letter?

12 MARK HOLLINGSWORTH: No.

13 THE COURT: And so am I to understand that -- is  
14 there another person who authors letters besides you?

15 MARK HOLLINGSWORTH: No. At the time we were taking  
16 cases where we had not authored the letters at all.

17 THE COURT: Okay. And tell me about that time.

18 MARK HOLLINGSWORTH: At that point, we were filing  
19 the FDCPA claims for these plaintiffs that were working with a  
20 credit repair organization.

21 THE COURT: With respect to those letters that you  
22 would send during the earlier time, were those typewritten  
23 letters?

24 MARK HOLLINGSWORTH: I'm sorry, at what point?

25 THE COURT: Well, you said before you started using

J. HODIL - BY THE COURT

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1       these, you sent out letters.

2           MARK HOLLINGSWORTH: In most of those cases, we  
3       wouldn't send those letters. The credit repair organization  
4       and the plaintiff would come to us with the FDCPA claim. At  
5       that point we would prosecute it.

6           THE COURT: So as you sit here today, you don't know  
7       who authored the Kayla Kantorowski letter?

8           MARK HOLLINGSWORTH: Not specifically, no.

9           THE COURT: All right. Thank you very much,  
10      Mr. Hollingsworth.

11       Who else do we have back here, Mr. Ward?

12       MR. WARD: Mr. Hodil is the only other staff member  
13      other than Mr. Gordon and myself.

14       THE COURT: Okay. So let's call him.

15       JOHN HODIL, a witness herein, having been  
16      previously sworn, was examined and testified as follows:

17       THE COURT: If you wouldn't mind stating and spelling  
18      your name for the court reporter.

19       JOHN HODIL: John Hodil, H-O-D-I-L.

20       THE COURT: Okay. And, Mr. Hodil, tell me about your  
21      role at the Ward firm.

22       JOHN HODIL: So I'm a legal project manager. I  
23      direct and oversee numerous processes of the law firm,  
24      including credit repair.

25       THE COURT: Okay. And do you oversee the preparation

J. HODIL - BY THE COURT

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1 of these, what I guess you are terming "dispute letters"?

2 JOHN HODIL: Yes, I do.

3 THE COURT: Okay. With respect to the Kayla  
4 Kantorowski letter that you see in front of you there, do you  
5 know who created the narrative for that letter?

6 JOHN HODIL: Kayla Kantorowski I believe was a client  
7 that came to us from another credit repair organization.

8 THE COURT: Not my question. Who prepared this  
9 letter? Who wrote this letter?

10 JOHN HODIL: I do not know.

11 THE COURT: You don't know who wrote the letter?

12 JOHN HODIL: No. I was not there during the creation  
13 of this letter.

14 THE COURT: Okay. Did you oversee sending this  
15 letter out to Portfolio Recovery and other entities?

16 JOHN HODIL: This letter was not sent by our firm. I  
17 can tell by the date because we were not doing credit repair  
18 at that time.

19 THE COURT: So this was not sent by your firm; is  
20 that what you are suggesting?

21 JOHN HODIL: Correct.

22 THE COURT: Do you know who sent this?

23 JOHN HODIL: One of the members of AIM Financial.

24 THE COURT: Okay. So turning your attention back to  
25 the Sofaly and Malcolm letters, this letter was prepared by

1 the Ward firm; correct?

2 JOHN HODIL: Correct.

3 THE COURT: And about what year did you all start  
4 engaging in this business?

5 JOHN HODIL: Around -- 2023. Early-mid 2023.

6 THE COURT: Okay. And so there's another document  
7 there, a Heath Fegely letter with a cover on it. So look  
8 through those. Those are all apart of the Ward firm's.

9 JOHN HODIL: Yes, this is one of ours.

10 THE COURT: Okay. So the Fegely letter, the Walker  
11 letter, the O'Connor -- O'Connis -- letter and the Boyle  
12 letter are all yours?

13 JOHN HODIL: Yes. Malcolm is ours. Sofaly is ours.  
14 Fegely is ours. Kantorowski is not.

15 THE COURT: What did you under -- did you create this  
16 process?

17 JOHN HODIL: I helped in its origin. We basically  
18 were in a room when we were first templatizing these letters,  
19 we wanted to basically capture the sentiment of many of our  
20 clients.

21 So Mr. Malcolm, I'm sure he does relate to a lot of  
22 the letter. These were meant to be form letters. We have I  
23 don't know exactly how many, but we have many form letters  
24 that we send out to these creditors during the credit repair  
25 process.

J. HODIL - BY THE COURT

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1           We have the form letters and then we -- after getting  
2 agency from the client, we make sure they always complete our  
3 credit repair agreement. We make sure that they know exactly  
4 what we are doing. They give us the agency to write their  
5 names, sign at the bottom, and to send these to whichever  
6 third-party creditors are listed on their credit report.

7           THE COURT: Can you tell me the purpose of them being  
8 handwritten in this way?

9           JOHN HODIL: Normally -- we saw this strategy from  
10 AIM. It's mainly meant to point out the defects in  
11 Portfolio's disputing system.

12           We've known from our debt defense practice that we  
13 will send forms that specifically say, This is our law firm  
14 letterhead. If you don't update that, this is disputed, if  
15 you continue contacting our clients, we will sue you. Those  
16 get missed. But we sill send these handwritten ones because,  
17 quite frankly, I think they have software sometimes that  
18 easily picks out these disputes.

19           We also know that clients that send disputes, they're  
20 not always honored. So this way we can send our disputes and  
21 track them by proof of mailing when they get there, and then  
22 when we pull the next credit report, see if the dispute was  
23 actually honored or not.

24           THE COURT: I guess I'm trying to understand why they  
25 are handwritten in this way.

1           JOHN HODIL: They are handwritten -- it's just  
2 another form in which to send them. We don't want to put them  
3 on letterhead because we don't have an underlying debt case.  
4 So it's not like we are going to send -- reference some MDJ  
5 docket number.

6           So for these, we just started sending them form  
7 letters. We got the idea from other credit repair agencies  
8 that have done so with varying success.

9           THE COURT: With respect to these particular letters  
10 by Mr. Sofaly and Mr. Malcolm, those are not Mr. Sofaly or  
11 Mr. Malcolm's words; correct?

12           JOHN HODIL: No.

13           THE COURT: Okay. And you all got in a room and  
14 decided that you were writing some of these letters and this  
15 would be the contents of these letters?

16           JOHN HODIL: Yeah. We wanted to have a general  
17 format. We didn't want to send the same letter every time,  
18 but we definitely had like 7-to-11 templates that we have that  
19 we send out to various different creditors.

20           Again, when we were drafting these, Mr. Hollingsworth  
21 was the one physically writing them, but Attorney Gordon and I  
22 were in the room and, again, we just wanted to capture the  
23 general sentiment of many of our debt defense clients. That's  
24 how we originally arrived at this, is dealing with debt  
25 defense clients, listening to them, talking to them,

J. WARD - BY THE COURT

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1 understanding their plight and trying to do something to  
2 rectify, and the credit repair has certainly done that, as  
3 testified by Mr. Malcolm and Mr. Sofaly.

4 THE COURT: And so with respect to say, for example,  
5 the specificity of a particular type of television set in the  
6 context of both the Sofaly and the Malcolm letter, that's  
7 something you guys came up with?

8 JOHN HODIL: Yeah, it's just a machination of that.  
9 It's just fluff. That's all it is.

10 THE COURT: Okay. I think those are my questions for  
11 you. Thank you.

12 JOHN HODIL: Yes, ma'am.

13 THE COURT: Thank you.

14 Okay, Mr. Ward, I would ask if you can please come to  
15 the stand.

16 JOSHUA P. WARD, having been previously sworn, was  
17 examined and testified as follows:

18 MR. WARD: Good morning, Your Honor.

19 THE COURT: Good morning. If you wouldn't mind  
20 stating your full name for the court reporter.

21 MR. WARD: Joshua Paul Ward, W-A-R-D.

22 THE COURT: Okay. Now, Mr. Ward, you are the owner  
23 of your firm; correct?

24 MR. WARD: Yeah, president and owner, a hundred  
25 percent equity.

J. WARD - BY THE COURT

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1                   THE COURT: Okay. Very good. And with respect to  
2 this letter, these letters and the scheme that we're here to  
3 talk about, tell me about how this started.

4                   MR. WARD: So Attorney Gordon has been with me for  
5 about ten years -- and you became a lawyer in what year,  
6 Travis?

7                   MR. GORDON: 2020.

8                   MR. WARD: And he's been a law clerk since then. So  
9 he has grown into overseeing the debt defense practice, which  
10 involves pretty robust FDCPA E8 practice, and he's also -- he  
11 made contact with folks at AIM Financial, who actually reached  
12 out to him seeing his activity on the docket for, you know,  
13 FDCPA E8 cases, and they asked the firm to represent them and  
14 clients jointly.

15                  They're a credit repair organization, which there's a  
16 few distinctions, obviously, between a credit repair  
17 organization and a law firm, but nonetheless, they are an  
18 agent, and they draft letters on behalf of clients, as is my  
19 understanding there's lots of evidence of this type of  
20 activity --

21                  THE COURT: When did you start engaging in this  
22 practice, Mr. Ward? I'll get back to the question.

23                  MR. WARD: Well, I'm trying to answer the question,  
24 Your Honor.

25                  THE COURT: When?

J. WARD - BY THE COURT

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1 MR. WARD: So it was when AIM came to us.

2 THE COURT: Okay. Which was when?

3 MR. WARD: I don't know the exact date, but I would  
4 want to say that it was probably -- I was thinking it was in  
5 2022, but it might have been in 2023. It's been a very full  
6 year. So sometimes it feels like it's longer ago, but it was  
7 when AIM came along.

8 And Travis enrolled those cases. I talked to Travis  
9 about those cases and, you know, I had input, and I didn't see  
10 anything unusual about it or, just to be quite on the nose  
11 here, certainly nothing illegal.

12 Travis prosecuted those cases in court and went  
13 through discovery with some of the best lawyers that there  
14 are. Nobody ever accused Attorney Gordon or AIM or its  
15 clients of doing anything wrong whatsoever.

16 So Attorney Gordon came to me in fall of 2023 and  
17 said we should, you know, adopt some of these practices and  
18 bring them in-house because it's repeatable and scalable and  
19 it fits nicely into our bouquet of services. And that's -- I  
20 have obviously more to say, but when? Fall of 2023.

21 THE COURT: You're saying that Mr. Gordon is the  
22 brain trust that came up with this plan?

23 MR. WARD: Certainly it was his impetus, but I had  
24 lots of oversight input, and we all talked in this -- but  
25 yeah, Attorney Gordon is very sure-footed, and his practice is

J. WARD - BY THE COURT

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1 pretty limited to FDCPA defense, and he's very competent, very  
2 knowledgeable.

3 THE COURT: And you agreed with this practice, is  
4 that what you are suggesting?

5 MR. WARD: In a general sense, yes, but if there's  
6 specific -- yeah, I mean, in general, yes. I mean, did I see  
7 every stitch -- I mean, he does operate with some autonomy. I  
8 don't see every stitch of paperwork that he has drafted to  
9 date.

10 But I know that your focus is the letters. I was  
11 certainly aware of the letters. I saw some of them, and I  
12 remember having a conversation with them about the prior cases  
13 that they litigated and settled.

14 THE COURT: Who is "them"?

15 MR. WARD: My team: Gordon and Jack and  
16 Hollingsworth and Salada. And I said you better make sure  
17 that you have the agency in every one of these cases, and  
18 that's not a concept that we're unfamiliar with because in,  
19 you know, other parts of the business, there's -- sometimes  
20 the defendants will successfully challenge, standing by making  
21 sure in the rep agreements that we have specific agency to  
22 dispute particular debts.

23 Again, we were never accused of any wrongdoing, but,  
24 you know, in the context -- you know, obviously, I'm here, and  
25 a federal judge is suggesting -- there's a member of the

J. WARD - BY THE COURT

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1 Department of Justice here and additional magistrates. You  
2 know, people are suggesting that we've done something illegal,  
3 but you have to understand, we never did this in the shadows.  
4 We would never intend to do anything illegal, and we certainly  
5 wouldn't intend to gleefully come into federal courts with  
6 lawsuits that were premised on something illegal.

7 And when you consider that he had already  
8 successfully done this with a batch of cases for a credit  
9 repair organization, I think it sheds light on, you know, my  
10 business judgment and my judgment as the principal of the  
11 firm.

12 THE COURT: What was the purpose of the handwritten  
13 letters?

14 MR. WARD: So a few things. There -- so I believe  
15 that Portfolio is way more likely to disregard a handwritten  
16 letter. That's probably -- the same thing with us. If --  
17 well, we're not that big. But if you think about it, they are  
18 probably going to scan the letters in, right, and then they  
19 are probably going to have some OCR software look through it.  
20 That's nothing illegal about that. You know, it is --

21 THE COURT: So let me stop you for a moment. So they  
22 are designed to purposefully sidestep the review process of  
23 Portfolio?

24 MR. WARD: In part, yes, but, you know, there's --  
25 again, there's nothing wrong with that, and I'd like to

J. WARD - BY THE COURT

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1 explain why that is.

2 THE COURT: Okay.

3 MR. WARD: Number one, a handwritten letter -- to say  
4 that writing a handwritten letter is illegal, I don't know of  
5 any court, law that would ever prohibit your right to freedom  
6 of expression in that way. Not to get constitutional on you,  
7 but, okay, consider that.

8 Number two, there is a dearth of case law  
9 specifically discussing E8 that talks about -- well, I'll get  
10 to that in a second.

11 No. 2 is the fact that, you know, people that are  
12 likely to draft handwritten letters are the people that  
13 deserve the most protection under the FDCPA.

14 So if a savvy law firm and lawyer like Attorney  
15 Gordon wants to test their systems to make sure that they're  
16 honoring handwritten letters -- again, which are the form of  
17 communications that are most likely to be made by indigent  
18 folks, I say good on him. That makes him smart. That doesn't  
19 make him a criminal. Okay?

20 Thirdly, look at the consent orders that the Federal  
21 Government, the CFPB is putting on Portfolio two times. One I  
22 think in 2012 and one in 2013. They are supposed to be  
23 looking out for this type of stuff.

24 Then there's also a dearth of case law in Portfolio  
25 V. Evans, 7th Circuit, which is a case that I want to talk

J. WARD - BY THE COURT

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1 about a lot and willing to give to the Court, and it's been  
2 cited in my letter, there is no problem with the fact -- and  
3 the courts have used this word, of course the letter is  
4 contrived to make a violation.

5 What does a credit report organization do? It's a  
6 very limited, one-dimensional thing. You send disputes. You  
7 check the credit reports. They don't update it. Bang. E8  
8 violation.

9 You could send a dispute letter written on a ham  
10 sandwich with mustard, give it to Keith McGurgan, and if he  
11 knows or should know that that's a legitimate dispute, they  
12 have to update it. Look at the standard in Portfolio v.  
13 Evans.

14 THE COURT: Can I ask why you don't write a letter  
15 that says, "I dispute this." Tell me about the fluff that's  
16 in these letters.

17 MR. WARD: Okay. So again, there's case law on this.

18 THE COURT: I'm not asking about case law. I'm  
19 asking you to tell about the fluff that's in these letters.  
20 Why is it there?

21 MR. WARD: Your Honor, please, I am being accused  
22 here --

23 THE COURT: Why is the fluff there?

24 MR. WARD: I'm trying to answer the question, and I'd  
25 like a little latitude to explain why the fluff is there.

1                   THE COURT: I'm waiting.

2                   MR. WARD: Okay. That was a practice that was used  
3 by AIM and it is -- the letters have to say something. Right?  
4 So they are designed to be nonsensical. Right? They are  
5 designed to have opinions in there, not facts, and that's  
6 something that I know that I discussed with them. Like don't  
7 put things in there where you are -- you know, where you know  
8 that -- you know, you are not representing somebody who is  
9 going to file bankruptcy. You know, you are not representing  
10 that somebody is in jail. Because they all know -- I mean,  
11 they are competent. Attorney Gordon and myself, we know that  
12 that changes potentially their collection tactics.

13                  But, you know, putting fluff in there, talking about  
14 generic, you know, goofy opinions that a handwritten -- you  
15 know, an indigent person might say, like "I find this world is  
16 very technically complicated" and "You're buying my debt" and  
17 "I don't know who you are," well, it may be goofy, but I don't  
18 think it's illegal, and I think those types of letters are  
19 exactly the types of letters that need to be, you know,  
20 regarded and read.

21                  See, Portfolio, I guess they don't want to read them  
22 and they don't want to acknowledge the dispute, doesn't make  
23 me a criminal. It doesn't make Attorney Gordon a criminal.

24                  It's -- we never intended to hide that, you know.  
25 And there is great case law that talks about -- the only thing

J. WARD - BY THE COURT

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1       that matters under E8 is do we know the debt is disputed. So  
2       it's not material to any aspect of the civil case liability  
3       and defense that the letters have a goofy tone.

4           THE COURT: It might be relevant to other things,  
5       though, like your ethical responsibilities.

6           MR. WARD: It could be, and I'm prepared to address  
7       those questions. I really am.

8           THE COURT: Okay. With respect to the fluff, you  
9       would concede that the fluff is not something that you  
10      discussed at all with any of your clients, including  
11      Mr. Malcolm and Mr. Sofaly.

12           MR. WARD: And that was something that I noticed. So  
13      I see that Your Honor -- I believe Your Honor is keying in on  
14      the fact that the letters, the language of the letter  
15      pre-dates Attorney Gordon's conversation with the client. It  
16      certainly does in most cases; meaning, that the letter is  
17      drafted in can, and there's a battery of them, and what you  
18      are doing is you are matching a consumer's case to a letter.  
19      He is going to tell you and the client --

20           THE COURT: Excuse me, who is "he"?

21           MR. WARD: Attorney Gordon.

22           THE COURT: Okay.

23           MR. WARD: And the clients will tell you that we tell  
24      them that we are doing that. We're telling them that we are  
25      sending an absurd letter -- I'd like the record to reflect

J. WARD - BY THE COURT

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1       that my client is nodding his head.

2           We tell them that we're going to send an absurd,  
3       goofy letter. We tell them it's part of the strategy. It's  
4       in the record manuals. As long as you have agency to do it,  
5       the fact that you are assisting a consumer in drafting a goofy  
6       letter, no problem.

7           You know, it's like that chicken or the egg. It  
8       doesn't matter. It's a canned letter. He's saying, Here,  
9       this is what we're going to send for you. Do I have your  
10      authorization to do it? And they see it.

11          So, you know, this whole thing about the TV, I got to  
12       tell you -- and I purposefully kept my distance from these two  
13       clients because I never wanted there to be any suggestion that  
14       I was coming in after the fact trying to clean this up. I  
15       knew what they were doing in a general sense. I wasn't  
16       involved in these two cases. He's beta tested this, Attorney  
17       Gordon, and I trust him.

18          And this whole thing about the TV, you know, that  
19       is -- I think that you are going to learn that that, you know,  
20       TV aspect, number one, has no bearing on the civil case, but,  
21       you know, nor would it affect how Portfolio would handle this  
22       thing, but I think that that's just, you know, part of the  
23       form letter.

24          THE COURT: So you sent a letter representing that it  
25       came from someone it did not come from; correct?

J. WARD - BY THE COURT

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1 MR. WARD: I absolutely disagree with that.

2 Principals of agency. Right? If he has agency to write and  
3 do exactly what he did, then he is the consumer, and I have  
4 case law here under the FDCPA that talks about that. Not to  
5 mention AIM did it. Right? AIM --

6 THE COURT: We are not here to talk about AIM.

7 MR. WARD: Well, this is my answer. Other credit --  
8 this is a practice that is not unique to me. Not unique to  
9 Attorney Gordon. We didn't invent it. It is employed by  
10 credit repair organizations all the time.

11 THE COURT: And this, just so I understand, is to  
12 generate lawsuits, is it not?

13 MR. WARD: Yes. And again, there's no problem with  
14 that. But I want to finish answering that question because if  
15 you are saying that I'm misrepresenting -- now, it would be  
16 true that he -- and by the way, I never sent any letters, but  
17 I understand it's my firm and I understand how vicarious  
18 liability works, and I'm responsible for every one of these  
19 people. I have had this firm for nearly a decade. I get  
20 that.

21 But it would be true to say that if you draft, write  
22 and sign a letter in this fashion and you didn't have the  
23 agency, then the answer to your question would be in the  
24 affirmative. But because you have the agency specifically to  
25 do exactly what you are doing, every single stitch in that

1 letter, when that agency is established in writing and orally  
2 as it is, it's absolutely fine.

3 THE COURT: You'll agree, Mr. Ward, if you send me a  
4 letter and it's signed by you, I have every reason to assume  
5 that that letter came from you; correct?

6 MR. WARD: Obviously.

7 THE COURT: Okay. So presumably when Portfolio gets  
8 a letter from an individual, they have every reason to assume  
9 it came from that individual, the signature is that of the  
10 individual; correct?

11 MR. WARD: Well, here's the thing, when you -- and I  
12 have researched the law on this. When a consumer authorizes  
13 you to sign a letter as a lawyer, you can do it.

14 THE COURT: That's not what I'm asking you.

15 MR. WARD: So it is their signature in point of fact.  
16 I mean, it if they're saying "sign my name," that is their  
17 signature. It's genuine.

18 THE COURT: And the contents of the letter you would  
19 say as well?

20 MR. WARD: Well, because you have the agency. Now,  
21 you take away the agency and you don't obtain the client's  
22 authority -- I mean, that's why paragraph 6 in the rep  
23 agreement says what it says, and that was something that I  
24 told him. I was like you -- I said -- not thinking of the  
25 court, thinking of the Department of Justice certainly not,

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1       but thinking about people like Lauren Burnette, I said I know,  
2 you know, where the pinch points in these cases are. You  
3 better make sure you have the agency like you did in those  
4 prior cases. So you put it expressed in that rep agreement.

5           THE COURT: So you'll agree with me, Mr. Ward, that  
6 the contents of those letters, some of which are sitting in  
7 front of you if you care to thumb through them, aside from the  
8 dispute, they're false?

9           MR. WARD: No.

10          THE COURT: They're true?

11          MR. WARD: Well, here's the thing, Your Honor, with  
12 the agency -- it would be false if you didn't have the agency.

13          THE COURT: I'm asking you whether the contents of  
14 the letters that you supplied, whether it be to Portfolio or  
15 any of the other agencies listed there -- and again, feel free  
16 to thumb through them -- whether the contents, other than the  
17 dispute, are false?

18          MR. WARD: Categorically, no. Unless you were to  
19 somehow find out that these guys went rogue and started  
20 letters on behalf of people who were not their principals and  
21 they were not their agent.

22          THE COURT: I'm not asking whether agency exists.  
23 I'm asking you whether the contents of the letters are false.

24          MR. WARD: I believe -- these two gentlemen have  
25 testified that they -- these are opinions. They are opinions.

1 Right?

2 THE COURT: So you believe that those are opinions --

3 MR. WARD: Well --

4 THE COURT: -- of Mr. Sofaly and Mr. Malcolm that are  
5 identical opinions that have been supplied to Portfolio and  
6 the other agencies?

7 MR. WARD: Please restate that question, Your Honor.

8 THE COURT: So you are suggesting that the contents  
9 of those letters are opinions that apparently identical to  
10 Mr. Sofaly and Mr. Malcolm that are supplied to Portfolio and  
11 these other entities?

12 MR. WARD: You know, opinions, like a lot of other  
13 things, can be shared. And when you say, "Hey, client, do you  
14 share this opinion," you are probably going to get that answer  
15 from anybody, any of these clients.

16 These opinions that are put in here -- again, not  
17 material facts designed to alter or mislead --

18 THE COURT: Well, tell me what the opinions are.

19 MR. WARD: Well, you're right, I haven't examined all  
20 of these specifically, but, you know, I -- and I believe, you  
21 know, he knows and Mark knows, and they all know that when  
22 they are drafting these, I told them -- you know, we  
23 definitely talked about -- and certainly at the AIM stage --  
24 you know, tell everybody, like don't go putting things in here  
25 like, you know, facts like about bankruptcy and about --

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1                   THE COURT: What are the opinions in the letters?

2                   MR. WARD: I believe they are generic opinions about,  
3 you know -- well, like this one, for instance, like society  
4 or, you know, generally -- they are just nonsensical. So they  
5 are like of no import, really.

6                   THE COURT: Do your clients have nonsensical opinions  
7 that they shared with Portfolio and others?

8                   MR. WARD: Well, you could say that, but there's  
9 nothing illegal about a consumer expressing an opinion in a  
10 dispute letter under E8.

11                  THE COURT: Okay. Thank you, Mr. Ward. You can step  
12 down. I guess, Mr. Gordon, you are in the hot seat now.

13                  TRAVIS ANDREW GORDON, having been previously sworn,  
14 was examined and testified as follows:

15                  THE COURT: I'm not sure if you took the exhibits  
16 from --

17                  MR. WARD: You want them? Oh, yeah, I sure did. And  
18 again, I didn't have a chance to review all of those, but.

19                  MR. GORDON: Good afternoon, Your Honor.

20                  THE COURT: Good afternoon. If you could please  
21 state and spell your name for the court reporter, Mr. Gordon.

22                  MR. GORDON: Travis Gordon, G-O-R-D-O-N.

23                  THE COURT: Okay. And, Mr. Gordon, tell me about  
24 these letters.

25                  MR. GORDON: Sure.

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1                   THE COURT: Apparently you are the creator.

2                   MR. GORDON: Well, I don't know if I was the creator,  
3 but I definitely oversaw them and reviewed them, Your Honor.

4                   A little bit refreshing what Attorney Ward said, you  
5 know, I was dealing with other companies that were doing this.  
6 I carried this practice through. Involved in discovery.  
7 Disclosed all of this through those processes. It seemed like  
8 a good -- not only a good, you know, business move, but also,  
9 we get a lot of clients that get sued by these debt  
10 collectors. They have not great credit reports. It was just  
11 another service we could offer them to help them clean up  
12 their credit report, and I have had a lot of -- you know, I  
13 spend most of my time on the phone with clients. But small  
14 debts, you know, they cause a lot of problems for them, cause  
15 a lot of problems getting loans, and I was actually really  
16 excited to say, Hey, I think I can do something that can  
17 really help these people out. So I basically just started off  
18 by trying to replicate those processes that I had already  
19 seen.

20                  I understand Your Honor's issues with some of that  
21 wording. My thought was always -- and I would explain this to  
22 the clients -- we are going to do a handwritten letter. It's  
23 going to look like it's coming from you. There's going to be  
24 a lot of superfluous language in there. We'll talk about the  
25 weather, but we're going to make sure we communicate that

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1 dispute, and we made sure that is sent over. If we're going  
2 to order a credit report again, we audit it. We have varying  
3 results that we keep close with and track, and that's a lot of  
4 what Jack Hodil does, the data there, and we have gotten great  
5 results for the clients, and they have always been really  
6 happy with our work.

7 First time ever hearing there's some issue with this.  
8 We have looked over it. We have talked to other counsel.  
9 Sitting here today, I don't believe there's anything improper  
10 about what I did. But I'm obviously -- you know, this is  
11 something I became passionate about. In law school I never  
12 thought I would be doing debt. I'll fight a debt for a client  
13 for \$600. They have tears in their eyes. It's a lot of money  
14 to them.

15 I'm proud to be able to do this work for my clients.  
16 I'm proud to be able to offer this service to the citizens of  
17 PA who are not financially well off, and I think that whatever  
18 issues there may be here that we are not seeing, I believe  
19 they could be resolved, and it could be as easy as just, you  
20 know, sending these to the clients themselves to have them  
21 sign with rep agreements.

22 But that's where it all started and how the letters  
23 came in. I sat down with Mark initially to draft some and  
24 review them. Once we had a couple good templates, we  
25 started -- we offer it now with our representation to these

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1 clients when they call us to defend a lawsuit. But at the  
2 time, we just called them and sent separate agreements for  
3 credit repair, and the process just kind of started going.

4 And we have had questions. I think they have all  
5 been answered as far as the agency and how far we can go with  
6 that, but I'm here to say I think it's a great service for the  
7 people of this state that have trouble getting their credit  
8 scores up, and I am one hundred percent willing to do whatever  
9 we have to do to make sure that we are in compliance with  
10 everything and everything is aboveboard.

11 THE COURT: And so the purpose of burying the dispute  
12 in what has been called "the fluff," is an effort to have the  
13 agencies report on these.

14 MR. GORDON: Well, see, I would argue that they have  
15 to read them.

16 THE COURT: So you are testing the agency? Is that  
17 what you are doing?

18 MR. GORDON: Sure. And I think as far as it's a  
19 brand-new practice, so we're collecting a lot of data. I  
20 think that what we're trying to do here is strategize and do  
21 what's best for the client and let's get the best result for  
22 the client.

23 Now, I would say these letters are -- they take a  
24 minute to read. I know what the duties and obligations of  
25 these debt collectors are. I find it a pretty odd argument to

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1 say these debt collectors can't read a one-minute paragraph.  
2 You are confusing them. You know, it just -- I don't buy  
3 that.

4 THE COURT: But you know that you are; right?

5 MR. GORDON: Well, I think that if a one-minute  
6 letter confuses a debt collection agency, then they are the  
7 ones that need to review their processes to make sure that  
8 they are paying full attention to these dispute letters they  
9 are receiving.

10 THE COURT: Joungsun, if you wouldn't mind. I want  
11 to represent this is a document that was provided to the Court  
12 by your firm, by Mr. Ward, and by you I believe; correct?

13 MR. GORDON: Yes, Your Honor.

14 THE COURT: Okay. And it's an agreement for credit  
15 audit and repair; correct?

16 MR. GORDON: Yes, Your Honor.

17 THE COURT: I'll just turn your attention to  
18 paragraph 3 of this agreement. It says, Client agrees to give  
19 law firm agency to use their personal information in  
20 processing disputes to the third-party creditors, including  
21 agency, to send the handwritten letters to third-party  
22 creditors styled as though they were sent from the client.  
23 This greatly increases the chances that creditor will violate  
24 State and Federal laws, as handwritten letters are often  
25 overlooked and cannot be scanned into and processed by

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1 software employed by creditors to detect disputes.

2 Can you tell me about that?

3 MR. GORDON: Yes, Your Honor. I believe that we  
4 recognize that there's some shortcomings in the debt  
5 collection agency's dispute processes, and we strategize with  
6 our client to get them the best result with our services.

7 THE COURT: So your intention is not really to  
8 dispute the debt?

9 MR. GORDON: I always tell clients there's three  
10 outcomes. A lot of times we find that when debt collectors  
11 receive these letters, they just remove the trade line. We  
12 have had some clients that's been really great for. They have  
13 had, you know, over \$10,000 just fall off their credit report  
14 by receiving dispute. So that's one outcome.

15 Another outcome is that they will read the dispute,  
16 as a lot of them do. When we send these letters, they do pick  
17 them up and they do report them as disputed.

18 THE COURT: But that's not your purpose in this, is  
19 it?

20 MR. GORDON: I would say my purpose is to give the  
21 client the best result and that is one of the results. So it  
22 is a purpose.

23 THE COURT: It is your purpose to obscure the  
24 dispute?

25 MR. GORDON: The purpose to obscure -- I would say

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1       that the purpose is to dispute the debt and then to see  
2       whether or not they report that dispute.

3           THE COURT: You can easily write a letter that says,  
4       "I dispute this debt. Signed Robert Sofaly." You didn't do  
5       that; correct?

6           MR. GORDON: No, we didn't.

7           THE COURT: Okay. I'm trying to understand why.

8           MR. GORDON: Your Honor is correct. I mean, it is a  
9       way we think that these creditors won't do their due diligence  
10      and will miss these disputes, which is beneficial to the  
11      client.

12          THE COURT: And you'll agree with me that aside from  
13       the debt language, what little debt language there is in these  
14       letters, the rest of the letter is concocted, it's not true.

15          MR. GORDON: Well, I think a lot of that letter is  
16       just superfluous language.

17          THE COURT: Is it concocted and untrue?

18          MR. GORDON: I don't know if I would call it untrue.  
19       I think a lot of the sentiment in there is what a lot of our  
20       clients feel generally, but if you were to say, you know,  
21       specifically did I have a conversation with the client and  
22       these were their exact words, in that sense, you know, it's  
23       not true.

24          THE COURT: All right. Those are all the questions I  
25       have right now. I recognize, Mr. Ward, that you might have

1 some desire to put something on in a primitive way. I don't  
2 know if that's true or not.

3 MR. WARD: It is, Your Honor.

4 THE COURT: Okay. So what we're going to do now is  
5 take a break. We will regroup at 1:15 and we'll hear anything  
6 more that you have to say.

7 MR. WARD: Point of order, Your Honor, how much time  
8 do we have reserved for this hearing, just so I am cognizant  
9 of that?

10 THE COURT: We will go -- what's our next one,  
11 Joungsun? Is it 2:30?

12 THE DEPUTY CLERK: Yes, 2:30, Judge.

13 THE COURT: So we'll go until 2:30.

14 MR. WARD: And we reconvene?

15 THE COURT: At 1:15.

16 MR. WARD: Okay, Your Honor.

17 THE COURT: Okay. Thank you. Stand in recess.

18 THE DEPUTY CLERK: All rise. This Honorable Court is  
19 now in recess.

20 (Court was recessed at 12:25 p.m.)

21 (In Open Court)

22 THE COURT: Okay. Be seated.

23 MR. SCHULZ: Your Honor, before we get started, I  
24 have a flight at 3:40, and I was wondering if it would be  
25 okay, Your Honor, if I left around two.

1                   THE COURT: Well, before you leave, I will ask both  
2 of you, and before I turn to Mr. Ward, Ms. Burnette as to you  
3 first -- and everybody remains under oath -- what do you know  
4 about this, I'll call it "scheme"? If you can speak directly  
5 into that microphone.

6                   MS. BURNETTE: Yes, Your Honor. Can you hear me  
7 okay?

8                   THE COURT: I can.

9                   MS. BURNETTE: Thank you. My role is to represent  
10 Portfolio Recovery Associates in FDCPA suits. I first learned  
11 that these letters were coming from Mr. Ward's firm the day of  
12 the Rule 16 conference when Mr. Schulz shared that with me.

13                  We had a case prior. Your Honor, has one of the  
14 letters.

15                  THE COURT: Because you thought they were coming from  
16 a creditor, a collection --

17                  MS. BURNETTE: I thought they were coming from AIM  
18 Financial, yes, Your Honor.

19                  THE COURT: Okay, very good.

20                  MS. BURNETTE: And my -- well, I thought they were  
21 coming from AIM Financial and now I know that they weren't  
22 beginning what looks to be around August 1 of 2023.

23                  I have for Portfolio Recovery 23 different matters  
24 that have been filed of record. I have not been retained in  
25 all of them in full disclosure. I count five or six versions

1       of the letter. I have found one that was a solo letter;  
2 meaning, I didn't find any duplicates. But the rest, we have  
3 seen multiples. And if Your Honor has any questions, I'm  
4 happy to answer them.

5           THE COURT: Well, with respect to these letters in  
6 particular, has that never been the point of any discovery?

7           MS. BURNETTE: It has. And it was the Stephon Talton  
8 matter in which discovery showed that AIM Financial was the  
9 credit repair organization who was preparing and mailing these  
10 letters. AIM Financial was added as a plaintiff to that case  
11 and responded to some written discovery. The matter ceased at  
12 EME.

13           THE COURT: Okay. Do you have anything that you need  
14 to add?

15           MR. SCHULZ: Same as what Ms. Burnette said.

16           THE COURT: Okay. Well, then you can certainly catch  
17 your flight.

18           MR. SCHULZ: Okay. Do you mind if I stick around  
19 until then?

20           THE COURT: Whenever you need to leave, you can  
21 certainly leave.

22           MR. SCHULZ: Thank you, Your Honor.

23           THE COURT: Okay. Mr. Ward, anything you would like  
24 to provide to the Court?

25           MR. WARD: Thank you, Judge. I feel like I'm playing

1       catch up. Do I understand that what has happened here in the  
2       most plain sense is that Ms. Burnette put the Court on notice  
3       that she thought that we were -- that all of these cases  
4       somehow involved AIM and we weren't disclosing that?

5             THE COURT: No.

6             MR. WARD: Okay. So, quite candidly, I had a lot  
7       more prepared to talk about the FDCPA and the common  
8       practice -- practices that are common to the industry and what  
9       types of things we see in the courtrooms --

10          THE COURT: When you say "the industry," what  
11       industry?

12          MR. WARD: Well --

13          THE COURT: The legal industry because that's the  
14       only thing I'm concerned about here.

15          MR. WARD: I understand that. So there's credit  
16       repair organizations --

17          THE COURT: And that's interesting, but you are a  
18       lawyer practicing in this jurisdiction. I'm asking if you  
19       have some information suggesting that lawyers are permitted to  
20       do what you've done, then I'm happy to hear it.

21          MR. WARD: Well, Your Honor, we do, and I was  
22       prepared to make oral argument on that, and I even wanted to  
23       maybe cross-examine a witness.

24          However, it occurs to me that a number of things have  
25       been surprising about these proceedings, and I find myself --

1 I note that -- you know, I have been informed that I guess a  
2 member of the Justice Department is here. So that gives me  
3 pause. I mean, there's other magistrate judges and audience  
4 in the gallery and --

5 THE COURT: This is a public courthouse, Mr. Ward.

6 MR. WARD: I understand that, Your Honor, I certainly  
7 do, and I respect every single person in this courtroom and  
8 particularly you, Your Honor. I respect the practice of law  
9 as well.

10 You know, the only reason I was talking about the  
11 industry is because the FDCPA, that's what I mean, the  
12 practice of FDCPA law, there's a whole economy surrounding it,  
13 and I think we can demonstrate in a more cool and calm fashion  
14 through briefing rather than my flustered testimony where it's  
15 very adversarial, but I would like to have some notice at this  
16 late stage, and I feel that this is a pretty late stage for me  
17 to be asking for the first time what are the precise nature of  
18 the Court's inquiry and what's going on?

19 Maybe there's a number of things that we agree upon?  
20 Maybe there are certain facets of this that -- you know, the  
21 substantive law, certainly informs the other aspects of it,  
22 but I would like to, you know, assert the right of my clients,  
23 myself, Attorney Gordon, everybody for procedural due process,  
24 and I ask the Court to issue a briefing schedule.

25 I also -- you know, I have an ethics attorney present

1 here today, and I've gotten some opinions, and I would like  
2 those to be shared.

3 THE COURT: There have been no proceedings against  
4 you at this point, Mr. Ward. At this point, I am on a fact-  
5 finding mission to find the facts. If you have some more  
6 facts you'd like to present, I'm happy to hear them.

7 MR. WARD: So one of my requests for -- this is  
8 totally uncharted water for me, Your Honor, I apologize.

9 THE COURT: Me too, Mr. Ward. This is the first time  
10 in all of my career that I have had this happen.

11 MR. WARD: Well, it would be -- wouldn't it be  
12 helpful and wouldn't you agree that it's everybody's right to  
13 know what we're being accused of, if anything?

14 THE COURT: You don't know?

15 MR. WARD: Not particularly, Your Honor, I do not,  
16 no.

17 THE COURT: Okay. Well, I am here to explore the  
18 nature of the letters that you have been supplying to  
19 Portfolio.

20 I'm here to understand whether the plaintiffs that  
21 you have brought into my court had any knowledge of these  
22 letters which we have explored today.

23 I'm here to explore the truth or fiction of these  
24 letters and the purpose behind them, and that's what I'm here  
25 to do, and that is my authority managing both of these cases,

1 and it is my authority and, frankly, my duty as a judge here  
2 on this court to have a sense as to whether or not you have or  
3 you have not acted ethically with regard to your  
4 representations made to this body.

5 MR. WARD: Okay. I would prefer to submit a written  
6 brief that would talk about the standards and talk about E8  
7 and why this is all permissible.

8 If the Court is not going to let me do that, I can  
9 attempt to articulate it and cite to cases.

10 THE COURT: Well, I want to be clear that you have an  
11 opportunity to present whatever you want to present here  
12 today. You knew we were having this hearing. You clearly  
13 knew what it was about given the flurry that followed my  
14 notice of this hearing, as well as my invitation to all of the  
15 participants in this hearing.

16 So I have no sense that you weren't fully aware of  
17 why you were here. You know also what happened at the Rule 16  
18 conference where Mr. Gordon apparently revealed for the first  
19 time to anyone that you all were behind these letters, which  
20 obviously gave me pause, and I indicated that to Mr. Gordon,  
21 too. It was not some vague consternation, as you all put it  
22 in your letter. It was very explicit. And so as to why you  
23 were here, everybody knows why you are here.

24 So you are given an opportunity right now to present  
25 this. If you prefer to submit something to me, that's fine.

1 I'm happy to look at whatever you submit. You'll have until  
2 Friday of this week to submit it. But just know the Court, as  
3 well as the Board of Judges as a whole, will be exploring  
4 whether or not any ethical transgressions have occurred here.

5 What Department of Justice does is their business.  
6 Not mine. But as to this court, we have an obligation to make  
7 sure that the attorneys who practice before them are upright  
8 in their representations and that they do not engage in fraud  
9 on the Court.

10 And so to the extent that that has happened, if it  
11 has, we have this record to determine that, and if there's  
12 more that you would like for us to see, I'm happy, as I said,  
13 to entertain that, but please know that this is going to be  
14 fully explored by the entire Board of Judges.

15 MR. WARD: I appreciate all of that clarity, Your  
16 Honor, and I do acknowledge and agree with much of what you  
17 said.

18 I do think for the purpose of everybody, that I'll be  
19 far better understood in a brief than I would here, and I  
20 don't want to waste anybody's time with what would be  
21 duplicative. So thank you for that opportunity, Your Honor.  
22 We would also request an expedited copy of this transcript.

23 THE COURT: You can certainly take that up with our  
24 court reporter. Absolutely.

25 Anything more for the record here?

1                   MR. WARD: A moment, Your Honor, to confer.

2                   THE COURT: Sure.

3                   (Pause noted)

4                   MR. WARD: A point of order and a request, Your  
5 Honor. I think that, you know, given the nature of the  
6 inquiry, that we need to have a better record, and I would  
7 like to have the opportunity to present the testimony of an  
8 ethics expert, and if we have a briefing schedule by Friday,  
9 that's not going to be possible. So we would ask for an  
10 additional hearing so that we could put on --

11                  THE COURT: Well, again, you do not stand accused of  
12 any ethical violations. There is a process by which those  
13 things happen, and those are the situations where you may  
14 defend against any such charges.

15                  MR. WARD: As the Court pointed out, though, you have  
16 independent discretion to exercise your own discipline even if  
17 the -- I'm flustered -- the PA Board of Ethics does not, and  
18 I'm unfamiliar with all of this parlance. I don't want to use  
19 any words incorrectly. Indictment? Investigation? This is  
20 certainly something -- this is an unconventional hearing, and  
21 all I'm asking is that I think I should be afforded the  
22 opportunity from a procedural due process standard to present  
23 in full relief the expert testimony of, you know, a witness  
24 who I believe will diminish wholly any suspicions and shed  
25 light on areas of the law and considerations that would

1       certainly be helpful and beneficial to all.

2           THE COURT: And as I understand, that individual is  
3       here right now?

4           MR. WARD: An ethics attorney is here.

5           THE COURT: Please feel free to call him.

6           RYAN JAMES: May it please the Court, Ryan James on  
7       behalf of the J.P. Ward law firm, Your Honor. May I step  
8       forward to the bar?

9           THE COURT: Yes.

10          RYAN JAMES: Your Honor, I'm a practicing member of  
11       this court in this district wearing my ethics hat. I'm  
12       generally here in a different capacity.

13          THE COURT: Okay. I'll ask if you can take the stand  
14       then, sir.

15          RYAN JAMES: Sure. Your Honor, I --

16          THE COURT: Let's wait until we get to the stand.

17          Joungsun, I don't believe he has been sworn. If you  
18       don't mind swearing him in.

19          THE DEPUTY CLERK: Would you raise your right hand,  
20       please.

21          RYAN JAMES, a witness herein, having been first duly  
22       sworn, was examined and testified as follows:

23          THE DEPUTY CLERK: You may lower your hand.

24          THE COURT: If you can please state and spell your  
25       name for the court reporter, sir.

1 RYAN JAMES: Ryan James, J-A-M-E-S.

2 Your Honor, my intention here is in being an advocate  
3 and wearing an ethics hat and providing ethics counsel to  
4 Mr. Ward.

5 As part of that counsel and having watched what  
6 transpired today, seeing the Court's orders that came down, I  
7 don't take dispute that this Court, the federal court, this  
8 district court separately issues a license and can govern  
9 attorney conduct before it and can make an inquiry in that  
10 regard.

11 Prior to coming in, and in consultation with  
12 Mr. Ward, one of the looming questions is what's the potential  
13 rule of professional conduct that's at issue, without getting  
14 into too much confidentiality? That was up in the air.

15 So as these proceedings have gone on and the witness  
16 testimony came out, certain things start to crystallize.

17 I think what's most important for my client, for the  
18 firm, is understanding from a notice perspective what  
19 particular rule violations this court and the Board of Judges  
20 is making inquiry into so that Mr. Ward on his behalf, on  
21 behalf of his firm, not necessarily engaging me, right,  
22 because I'm now here as an advocate. It would probably need  
23 to be somebody separate that can render an expert opinion to  
24 let Mr. Ward --

25 THE COURT: So you are not the expert who Mr. Ward

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1 would call, is that what you're suggesting?

2 RYAN JAMES: I think at one time before I just took  
3 this posture, that I would have potentially been that expert,  
4 and I could serve as that, but now that I'm here kind of in  
5 this advocate's role, it blurs that line.

6 I think what Mr. Ward needs, perhaps with one of my  
7 colleagues, is to come in here, understanding the Court's  
8 focused inquiry on what issues are available and to have  
9 somebody come in with experience in this area, to apply their  
10 expertise and opinion to the facts and the record that's been  
11 laid out.

12 So the Court's setting a briefing schedule within  
13 four days from now makes it difficult to give the Court a  
14 substantive opinion that can touch upon things.

15 The additional concern that I have for Mr. Ward in  
16 providing ethics advice, this Court being one jurisdiction  
17 that can govern attorneys and practice before it, is that  
18 Mr. Ward has a property interest in his license with the  
19 Pennsylvania Supreme Court, and as these proceedings unravel  
20 and if a referral is made to the Office of Disciplinary  
21 Council, Mr. Ward needs to not be in the chair here today as  
22 he was, essentially acting as his own lawyer, which isn't in  
23 his interests, but having somebody else that can protect those  
24 interests with an objective view.

25 So if this crosses over to the Office of Disciplinary

1       Council, that's something separate in a separate jurisdiction,  
2       but these proceedings that are occurring here today, given  
3       that everybody was under oath, can certainly be used and that  
4       could impact Mr. Ward's license.

5           So my concern in coming up here, right -- I  
6       appreciate that the Court swore me -- it's more or less  
7       wearing an advocate, an ethics hat that Mr. Ward needs to be  
8       given a sufficient amount of time, to expedite this  
9       transcript, produce it for review by independent counsel and  
10      to come in here and to put on his side of the case.

11           He certainly, as best as he could given these orders  
12      coming down last week, has made arrangements to have his  
13      clients here, his staff here and whatnot, but getting somebody  
14      else involved who can narrow in on the issues of what rules of  
15      professional conduct are we dealing with? What's the Court's  
16      particular concern? Is it a matter of frivolity? Is it a  
17      matter of fraud? Is it a matter of deceit? Is it a matter of  
18      agency? Competency? A whole host of things?

19           I think he needs to have a level -- right now, he's  
20      flying in the dark, so to speak, and there needs to be a more  
21      narrow avenue for somebody to look at and to give you an  
22      opinion.

23           So on his behalf, what I think would be prudent --  
24      and, Your Honor, you're the judge. Right? What I think would  
25      be prudent to protect his substantive and procedural due

1 process interests is allowing him to kind of take a minute,  
2 reassess, get some professionals here that can sit where he's  
3 at, represent him as a client, and to put on a presentation on  
4 his behalf that can then be briefed to touch upon rules of  
5 professional conduct that are concerning to this Court.

6           Why I started off with saying, you know, I'm here  
7 wearing an ethics hat, my practice here primarily is doing  
8 criminal defense work. So, you know, as I'm observing and I  
9 see a federal judge Mirandize essentially everybody or at  
10 least say, "Hey, you have the right to remain silent," it then  
11 raises different issues that I'm familiar with in the back of  
12 my mind given my substantive practice area, but he needs to  
13 know that because if this was essentially clients walked in  
14 here, they took an oath, and if they perjured themselves --  
15 I'm not saying that's the case -- that creates different  
16 issues for him from an ethical perspective.

17           So I guess what I'm asking here under oath is for the  
18 Court to indulge Mr. Ward to have some additional time, put  
19 his ducks in a row, and to put on a more -- this isn't  
20 demeaning to him -- put on a more professional presentation  
21 where he can distance himself from this, because having a guy  
22 who is currently representing himself in this capacity, his  
23 demeanor and him feeling under attack is going to affect how  
24 he comes across to you in the credibility assessments that you  
25 are going to make. So that's my ask on behalf of my client,

1       Your Honor.

2           THE COURT: Thank you. I appreciate that. I had  
3       been under the impression that you were to be the expert and  
4       that's why you were sworn in. You can step down.

5           RYAN JAMES: Thank you, Your Honor.

6           THE COURT: With respect to this, I say again, that  
7       at this juncture, this Court has not instituted any  
8       disciplinary proceedings against Mr. Ward. Mr. Ward will have  
9       a full opportunity to present anything should that be the  
10      case.

11           Nevertheless, just to put things in perspective for  
12       you, Mr. Ward, Rule 1.2D indicates: A lawyer may not counsel  
13       or assist the client to engage in criminal or fraudulent  
14       conduct.

15           Comment 10 to that rule reads: A lawyer is required  
16       to avoid assisting the client, for example, by drafting or  
17       delivering documents that the lawyer knows are fraudulent or  
18       by suggesting how the wrongdoing might be concealed.

19           Rule 3.1, Comment 1: A lawyer has a duty not to  
20       abuse legal procedure.

21           Rule 3.3: A lawyer has a duty of candor to the Court  
22       and may not knowingly make a false statement of material fact  
23       or fail to correct such a misstatement or offer evidence that  
24       the lawyer knows to be false.

25           Comment 2 to that: Lawyers have a special duty as

1       officers of the court to avoid conduct that undermines the  
2       integrity of the adjudicative process and must not allow the  
3       court to be misled by false statements of fact or by evidence  
4       that the lawyer knows to be false. A failure to make a  
5       disclosure can be the equivalent of an affirmative  
6       misrepresentation.

7                  A lawyer may not ignore an obvious falsehood and  
8       knowledge that evidence is false can be inferred from the  
9       circumstances.

10                 Rule 3.4B: A lawyer has a duty of fairness to  
11       opposing parties and counsel, including the duty not to  
12       falsify evidence.

13                 Rule 8.3: It is professional misconduct for a lawyer  
14       to engage in conduct involving dishonesty, fraud, deceit, or  
15       misrepresentation.

16                 Those are some of the rules. Okay. All right.  
17       Having said that, if you need additional time, the Court is  
18       willing to entertain not this Friday, but the following Friday  
19       for any submissions that you wish to make.

20                 As I said, you do not stand accused as of yet of any  
21       of those things. That is a decision to be made in converse  
22       with the rest of the judges of this court.

23                 MR. WARD: Thank you, Your Honor. So do I understand  
24       that we will not have the opportunity to put on an ethics  
25       expert?

1 THE COURT: An ethics expert, if you need one, would  
2 only come into play, it would seem, if you were accused of any  
3 ethical violation.

4 MR. WARD: I see.

5 THE COURT: Today was my factfinding mission. Again,  
6 if you have any facts that you would like to supply, either  
7 you or Mr. Gordon for that matter, you should feel free to do  
8 so.

9           We are going to take a brief break, though. If we  
10       can just break for about 10 minutes to recess and we can come  
11       back. We'll resume in ten minutes.

12 THE DEPUTY CLERK: All rise. This Court is in  
13 recess.

14 (A recess was taken.)

15 (In Open Court)

16                           THE COURT: Okay, be seated. A couple of  
17 housekeeping items.

With respect to the submission received last week from Mr. Ward's firm, I believe it was under the signature of Mr. Gordon, that information will be placed on the record in each of the two cases. It will be placed under seal in light of the fact that it could have the tendency to reveal attorney-client privilege.

As to the two pending matters, Sofaly and Malcolm,  
those two cases will be administratively stayed at this

1        juncture pending the resolution of some of the issues in this  
2        case.

3           As to whatever it is you would like to submit,  
4        Mr. Ward, for the court's perusal, please do so at both the  
5        Sofaly and Malcolm numbers, and we will certainly take a look  
6        at those.

7           I have confirmed in terms of the process that unless  
8        and until you are accused of an ethics violation by this  
9        court, which has attended to it lots of process, you know, the  
10        ethics guru that you intend to call is not really -- this is  
11        not the juncture of the case where that would be necessarily  
12        relevant.

13          As to whether the court, whether the court be me,  
14        decides that you have engaged in sanctionable conduct in this  
15        particular case, to the extent that the court determines that  
16        there's an issue there, it would certainly be a show cause  
17        order that would go out for you to respond to. Okay?

18          MR. WARD: Yes, Your Honor.

19          THE COURT: All right. Any questions about that?

20          MR. WARD: No, Your Honor.

21          THE COURT: Okay. And is it the case that you intend  
22        to file something in Sofaly and Malcolm at this juncture?

23          MR. WARD: Absolutely, Your Honor.

24          THE COURT: Okay. Very good. So we will look for  
25        that by next Friday.

1 Anything more from you, Mr. Ward?

2 MR. WARD: Not at this time, Your Honor. Thank you.

3 THE COURT: Okay. Anything more, Ms. Burnette?

4 MS. BURNETTE: No, Your Honor. Thank you.

5 THE COURT: Okay, we'll stand in recess.

6 THE DEPUTY CLERK: All rise. This Court is now in  
7 adjourned.

8 C E R T I F I C A T E

9 I, VERONICA R. TRETTEL, RMR, CRR, certify that  
10 the foregoing is a correct transcript from the record of  
proceedings in the above-entitled case.

11

12 \s\ Veronica R. Trettel  
VERONICA R. TRETTEL, RMR, CRR  
13 Official Court Reporter

02/21/2024  
Date of Certification

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